

# **THE EDUCATIONAL LEGACY OF RACIALLY RESTRICTIVE COVENANTS: THEIR LONG TERM IMPACT ON MEXICAN AMERICANS**

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† I dedicate this comment to my parents, who have always provided me with love and encouragement. I would also like to take this opportunity to thank the people who have helped me with this project. To Katherine Ramos, thank you for your guidance and patience. To Jon Haynes, thank you for your dedication and hard work. To all members of *The Scholar*, thank you for your suggestions and expertise.

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I. INTRODUCTION

Four years ago, my father began his second career as a high school history teacher for the Edgewood Independent School District in San Antonio, Texas. The Edgewood School District, which consists predominately of Mexican-American students, has always been San Antonio's poorest. Nevertheless, my father, with a gifted understanding of American history, was anxious to teach his new students about America and the American Dream.

After his first day of teaching, however, my father came home looking a little dejected. He was saddened and overwhelmed because so many of the high school seniors in his class lacked a fundamental understanding about America and its history. In fact, some of the seniors in his class thought Ronald Reagan was still President and that Texas was a country.

He did not know how to teach these students to achieve the American Dream, as they did not even possess a basic understanding of America or what the American Dream is all about.

I spent most of my childhood growing up in a modest middle-class neighborhood on the northwest side of San Antonio. My neighborhood provided me with a sense of security and safety. In fact, one of my most vivid childhood memories is the strong sense of community that my family shared with our neighbors. I seldom heard the sounds of police sirens or saw graffiti on walls or fences. At a very early age, however, I realized that not everyone was fortunate enough to experience this sense of security.

Since both my parents worked, my sister and I often stayed with our grandmother after school and during the summer months. Her neighborhood was very different from our own, and her neighbors were very poor. Inadequate education and lack of occupational mobility seemed to plague the lives of her neighbors. As a youngster playing in my grandmother's backyard, I constantly heard police sirens in the distance. I remember passing graffiti-stained walls and fences as I walked to the corner market. Potholes covered the unpaved streets in my grandmother's neighborhood, and I distinctly remember breathing the dust and dirt from cars passing by. Looking back, it was obvious that my grandmother's neighborhood did not receive the same municipal services or economic opportunities that my neighborhood received. I often wondered why there was such a disparity between my middle-class neighborhood and my grandmother's neighborhood. My curiosity grew as I began to realize that many north-side neighborhoods seemed to reflect the ideal American neighborhood, while many west-side neighborhoods reflected the stereotypical American slum. As a child, I constantly wondered why west-side neighborhoods, which were predominately Mexican-American, were so poor, while the north-side, Anglo-American neighborhoods were so prosperous. Today, as a law student, I find myself still searching for an answer.

The purpose of this comment is to examine how racially restrictive covenants of the past, which, although no longer enforced, continue to affect the educational opportunities of today's Mexican-American community in San Antonio, Texas. Mexican Americans in San Antonio have traditionally lived in poor economic and social conditions.<sup>1</sup> While examining

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1. See LEO GREBLER ET AL., *THE MEXICAN-AMERICAN PEOPLE: THE NATION'S SECOND LARGEST MINORITY* 305 tbl.13-5 (1970) (charting the income level of Mexican Americans between 1959 and 1966); Robert Brischetto, Charles L. Cotrell & R. Michael Stevens, *Conflict and Change in the Political Culture of San Antonio in the 1970s*, in *THE POLITICS OF SAN ANTONIO: COMMUNITY, PROGRESS, & POWER* 75, 75-76 (David R. Johnson et al. eds., 1983); JOAN W. MOORE, *MEXICAN AMERICANS* 9 (1970) (comparing the living conditions of Mexican Americans to national standards).

these poor social and economic conditions, one could hypothesize that Mexican Americans living in San Antonio's west-side neighborhoods<sup>2</sup> would face a difficult transition to American middle-class society. Poor education and a lack of occupational opportunities are among several factors that have contributed to this hypothesis.<sup>3</sup>

From a legal perspective, however, racially restrictive covenants have played an influential role in detracting from the educational opportunity of Mexican Americans in San Antonio. Using an analysis of case law and other academic research, this comment will examine how racially restrictive covenants eliminated educational opportunities for Mexican Americans.

Part II of this comment examines the historical background of racially restrictive covenants in San Antonio and how they were used to separate Mexican Americans from the rest of the city. Part III examines the long-term impact racially restrictive covenants have had on Mexican Americans. Specifically, Part III examines how racially restrictive covenants forced Mexican Americans to live in certain neighborhoods and attend poorly funded schools, depriving these students of educational opportunities. In the end, these racially restrictive covenants have served to isolate Mexican Americans from the rest of American society. Part IV strives to find a remedy that will undo the harm inflicted on the Mexican-American community.

## II. HISTORICAL BACKGROUND

### A. *Racially Restrictive Deed Covenants*

Many scholars of minority issues contend that America no longer seems to be concerned with racial segregation.<sup>4</sup> They argue that many

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2. See generally GREBLER ET AL., *supra* note 1, at 307-12 (providing historical background on Mexican Americans living in San Antonio and Los Angeles); Richard A. Gambitta et al., *The Politics of Unequal Educational Opportunity*, in *THE POLITICS OF SAN ANTONIO: COMMUNITY, PROGRESS, & POWER* 133, 141 (David R. Johnson et al. eds., 1983).

3. See GREBLER ET AL., *supra* note 1, at 302-06 (describing the educational and occupational status of Mexican Americans in San Antonio); Brischetto, Cotrell & Stevens, *supra* note 1, at 93-94; Richard J. Harris, *Mexican-American Occupational Attainments in San Antonio: Comparative Assessments*, in *THE POLITICS OF SAN ANTONIO: COMMUNITY, PROGRESS, & POWER* 53, 60-71 (David R. Johnson et al. eds., 1983) (describing the occupational factors that contribute to the creation of the poor working class status of Mexican Americans in San Antonio).

4. See Reggie Oh, Comment, *Apartheid in America: Residential Segregation and the Color-Line in the Twenty-First Century*, 15 B.C. THIRD WORLD L.J. 385, 388 (1995) (stating that residential segregation is a "forgotten factor in American race relations"); Marc Seitles, Comment, *The Perpetuation of Residential Racial Segregation in America: Historical Discrimination, Modern Forms of Exclusion, and Inclusionary Remedies*, 14 J. LAND

Anglo Americans are not aware of the destructive environment created by segregation.<sup>5</sup> Several of these minority scholars contend that racial segregation, which many minority groups still face, is at the root of America's poverty.<sup>6</sup> Specifically, these critics contend that residential segregation has played a major role in creating and sustaining poverty within the Mexican-American community.<sup>7</sup>

Residential segregation prevents members of a particular minority group from living in a certain part of a city simply because of their race or ethnic background.<sup>8</sup> African Americans have experienced the greatest amount of residential segregation.<sup>9</sup> As a result, social scientists have con-

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USE & ENVTL. L. 89 (1998) (stating that the word segregation is no longer used in the American social and political landscape); see also DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* 4 (1993) (stating that residential segregation had become a largely forgotten racial issue by the late 1970s).

5. See Oh, *supra* note 4, at 388-89 (asserting that segregation still exists today in the United States and Anglo Americans are unaware of the destructive environment that segregation creates); see also MASSEY & DENTON, *supra* note 4, at 11 (relating how the patterns of Anglo-American prejudice contribute to residential segregation).

6. See Oh, *supra* note 4, at 388-89 (arguing that segregation and poverty created a destructive neighborhood environment); Seitles, *supra* note 4, at 103; see also MASSEY & DENTON, *supra* note 4, at 9 ("Residential segregation is the principal organizational feature of American society that is responsible for the creation of the urban underclass").

7. See George A. Martinez, *Legal Indeterminacy, Judicial Discretion and the Mexican-American Litigation Experience: 1930-1980*, 27 U.C. DAVIS L. REV. 555, 569 (1994) (describing how white citizens in various cities used restrictive covenants to force racial minorities into a subordinate position); D. O. McGovney, *Racial Residential Segregation by State Court Enforcement of Restrictive Agreements, Covenants or Conditions in Deeds Is Unconstitutional*, 33 CAL. L. REV. 5, 37 (1945); see also MOORE, *supra* note 1, at 8-9 (describing survey results that indicate ninety-five percent of the Mexican-American population in San Antonio acknowledges discrimination from the Anglo community).

8. See Martinez, *supra* note 7, at 569-70 (describing how the white majority used restrictive covenants to prohibit the sale or lease of property to persons of a particular national origin, race, or religion from buying or leasing certain property); Oh, *supra* note 4, at 388-90 (providing a historical description of how white citizens created racially segregated neighborhoods through violent threats or civil mechanisms); see also ROBERT A. WILSON & DAVID A. SCHULZ, *URBAN SOCIOLOGY* 275-76 (1978).

9. Jon C. Dubin, *From Junktards to Gentrification: Explicating a Right to Protective Zoning in Low-Income Communities of Color*, 77 MINN. L. REV. 739, 774 (1993) (stating that African Americans have experienced more residential segregation than any other minority group); Oh, *supra* note 4, at 389-90 (providing a historical description of how white citizens of different towns created racially segregated neighborhoods through violence, threats, and civil mechanisms); see also Joe T. Darden, *Accessibility to Housing: Differential Residential Segregation for Blacks, Hispanics, American Indians and Asians*, in RACE, ETHNICITY, AND MINORITY HOUSING IN THE UNITED STATES 107, 124 (Jamshid A. Momeni ed., 1986) (asserting that African Americans are the most segregated minority group in American society, while Americans of Asian descent are the least segregated).

ducted extensive research on the effect of residential segregation on African Americans.<sup>10</sup>

Social scientists conclude that the general pattern of residential segregation is often related to the degree of assimilation of that particular immigrant group into American mainstream society.<sup>11</sup> Generally, assimilation into American society requires "that immigrant or foreign cultures should blend into the fabric of American society."<sup>12</sup> The underlying assumption is that Anglo-Saxon Protestant values define American society.<sup>13</sup> However, Mexican Americans do not fit into this paradigm of American assimilation.<sup>14</sup> San Antonio's proximity to the Mexican border has made it difficult for Mexican Americans in San Antonio to experience the same kind of assimilation often experienced by European immigrants.<sup>15</sup>

The level of residential segregation Mexican Americans endure varies between different regions of the United States.<sup>16</sup> For instance, Mexican Americans are moving out of poor neighborhoods faster in Los Angeles, California than in Odessa, Texas.<sup>17</sup> Therefore, the level of residential segregation encountered by Mexican Americans does not resemble the general pattern of residential segregation that other ethnic groups face.<sup>18</sup>

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10. See Dubin, *supra* note 9, at 774 n.159 (describing how researchers have created well-documented studies on the effects of segregation on African-American communities).

11. See MOORE, *supra* note 1, at 109; WILSON & SCHULZ, *supra* note 8, at 265-66 (describing how immigrant groups settled and maintained neighborhoods in America, but eventually formed a cultural polyglot); Harris, *supra* note 3, at 56.

12. Carlos Villarreal, *Culture in Lawmaking: A Chicano Perspective*, 24 U.C. DAVIS L. REV. 1193, 1196 (1991) (defining American mainstream ideals); see also ALFREDO MIRANDÉ, GRINGO JUSTICE 217-18 (1987) (describing the "order-pluralistic and conflict models" which represent the oldest sociological model explaining how immigrant groups assimilate into the predominant culture); RICHARD T. SCHAEFER, SOCIOLOGY 226 (1983) (defining assimilation as "the process by which an individual forsakes his or her own cultural tradition to become part of a different culture").

13. See SCHAEFER, *supra* note 12, at 226 (describing how assimilation occurs among minority groups who want to conform to the standards of the American majority); Kenneth Karst, *Paths to Belonging: The Constitution and Cultural Identity*, 64 N.C. L. REV. 303, 312-13 (1986) (describing the history of "Anglo conformity" becoming a benchmark for American assimilation); Villarreal, *supra* note 12, at 1197.

14. See MIRANDÉ, *supra* note 12, at 219-20. Mirandé notes how the order-pluralistic and conflict models fail to adequately explain the assimilation process Mexican Americans experience. See *id.* Unlike European immigrants, many of the ancestors of today's Mexican-American population were already living within the modern United States border. See *id.*; see also MOORE, *supra* note 1, at 109. See generally GREBLER ET AL., *supra* note 1.

15. WILSON & SCHULZ, *supra* note 8, at 277.

16. See MOORE, *supra* note 1, at 109.

17. See *id.* at 110.

18. See *id.* (detailing specific examples how Mexican-American segregation patterns differ from those of other minority groups).

Unlike other ethnic groups, Mexican-American segregation is not inversely correlated to duration of residence in the United States.<sup>19</sup> Generally, Mexican Americans are less segregated from Anglos than African Americans.<sup>20</sup> Very few legal scholars, however, have examined how the legal enforcement of racially restrictive covenants contributed to the poor social and economic status of Mexican Americans.<sup>21</sup>

Throughout America's history, residential segregation has played a major role in urban settings. Towns throughout the United States created segregated neighborhoods and prevented the integration of white neighborhoods,<sup>22</sup> producing practical implications on minority groups.<sup>23</sup> Residential segregation contributes to *de facto*<sup>24</sup> school segregation, poor public transportation, and limited employment opportunities.<sup>25</sup> As a result, minority groups who encounter residential segregation suffer poor social and economic conditions.

Residential segregation did not occur by chance, but rather by design.<sup>26</sup> In many instances, local city governments contributed to segregation. For example, many cities used urban renewal projects and urban planning techniques to create segregated neighborhoods.<sup>27</sup> Many towns also created segregationist zoning ordinances that divided citizens geographically along racial lines.<sup>28</sup> Ironically, the federal government also played a role

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19. *See id.*

20. GREBLER ET AL., *supra* note 1, at 274 (comparing the different levels of segregation between Mexican Americans and African Americans).

21. *See* Martinez, *supra* note 7, at 557 (asserting that legal issues which affect Mexican Americans are generally not brought to the forefront).

22. GREBLER ET AL., *supra* note 1, at 272; *see also* Dubin, *supra* note 9, at 744-45 (describing racial zoning ordinances in different cities throughout the United States).

23. GREBLER ET AL., *supra* note 1, at 272 (describing the potential negative effects of residential segregation); WILSON & SCHULZ, *supra* note 8, at 275-81 (providing insight as to how segregation affects different minority groups); Gambitta et al., *supra* note 2, at 141.

24. *De facto* segregation is segregation which results without purposeful action by government officials; real or actual segregation which results from social, psychological, or economic conditions. BARRON'S LAW DICTIONARY 131 (1999).

25. Brischetto, Cotrell & Stevens, *supra* note 1, at 76. *See also* Gambitta et al., *supra* note 2, at 141.

26. *See* Dubin, *supra* note 9, at 744-45 (describing how, during the early part of the twentieth century, border cities as well as other southern cities enacted strict racial zoning ordinances to separate blacks from whites); Seitles, *supra* note 4, at 89, 91 (asserting that various minority groups were intentionally excluded from associating with whites); *see also* GEORGE R. METCALF, FAIR HOUSING COMES OF AGE 149 (1988).

27. *See* Dubin, *supra* note 9, at 776 (asserting that public housing sites and urban renewal policies have served to confine Hispanics to segregated and inferior housing); *see also* Seitles, *supra* note 4, at 89, 91 (describing various political techniques used to segregate neighborhoods).

28. *See* Dubin, *supra* note 9, at 757-64 (describing how local governments used land controls and ordinances to not only place blacks in residentially inferior environments, but

in creating residential segregation throughout some parts of the nation. The Federal Housing Authority used a technique called "redlining"<sup>29</sup> as a tool to segregate neighborhoods.<sup>30</sup> These exclusionary practices prevented minorities from living in suburban areas of a community.<sup>31</sup> As a result, minorities were excluded from the superior educational and employment opportunities offered in suburban neighborhoods.<sup>32</sup>

### B. *San Antonio's History and Racially Restrictive Covenants*

Like many American cities, San Antonio's neighborhoods are divided along ethnic lines. For generations, San Antonio citizens have recognized San Antonio's west-side neighborhoods, which consist predominantly of Mexican Americans, as being poor and deteriorated.<sup>33</sup> Likewise, many San Antonio citizens associate the east-side neighborhoods, which consist predominately of African Americans, as similarly deteriorated and underdeveloped.<sup>34</sup> However, San Antonio's Anglo, north-side neighborhoods are predominantly suburban and middle-class.<sup>35</sup>

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to also diminish their general quality of life); Herbert Hovenkamp, *Social Science and Segregation Before Brown*, 1985 DUKE L.J. 624, 657 (1985) (stating that Baltimore passed a city ordinance that created separate residential districts for blacks and whites); Seitles, *supra* note 4, at 89, 92 (describing how zoning ordinances were used to segregate neighborhoods).

29. "Redlining" is unlawful discrimination by a financial institution that refuses to make loan on properties in allegedly bad neighborhoods. BLACK'S LAW DICTIONARY (7th ed. 1999). The Federal Home Owners Loan Corporation initiated the policy of "redlining," which categorized neighborhoods into a color scheme. See MASSEY & DENTON, *supra* note 4, at 51 n.1.

30. Seitles, *supra* note 4, at 92. See also MASSEY & DENTON, *supra* note 4, at 52 n.1.

31. Seitles, *supra* note 4, at 96. See also Bernard Ham, *Exclusionary Zoning and Racial Segregation: A Reconsideration of the Mount Laurel Doctrine*, 7 SETON HALL CONST. L.J. 577, 587 (1997); Martinez, *supra* note 7, at 569 (providing insight as to how the white majority used legal mechanisms to exclude minorities from white residential areas).

32. Seitles, *supra* note 4, at 96. See also Brischetto, Cotrell & Stevens, *supra* note 1, at 76 (asserting that Mexican Americans are poorer, less educated, and live in worse housing than their Anglo counterparts).

33. See Gambitta et al., *supra* note 2, at 141 (detailing how restrictive covenants in property deeds helped preserve the segregation in San Antonio); see also RICHARD A. GARCIA, *RISE OF THE MEXICAN AMERICAN MIDDLE CLASS: SAN ANTONIO: 1929-1941*, at 39 (1991) (describing the housing conditions of San Antonio's west-side neighborhoods); RODOLFO ROSALES, *THE ILLUSION OF INCLUSION: THE UNTOLD POLITICAL STORY OF SAN ANTONIO* 5 (2000) (describing the formation of San Antonio's west-side neighborhoods as a result of restrictive covenants).

34. See GARCIA, *supra* note 33, at 39 (describing the housing conditions of San Antonio's east-side neighborhoods); Brischetto, Cotrell & Stevens, *supra* note 1, at 76 (stating that San Antonio's east side consists predominantly of African Americans).

35. See GARCIA, *supra* note 33, at 39 (describing the housing conditions of San Antonio's north-side neighborhoods). See generally Brischetto, Cotrell & Stevens, *supra* note 1, at 76.



This type of residential segregation along ethnic lines is not unique to San Antonio; other towns throughout South Texas have experienced similar types of residential segregation. For many of these South Texas towns, ethnic divisions were created when the towns were first settled.<sup>36</sup> Many towns openly and explicitly segregated different parts of their communities.<sup>37</sup> For example, McAllen segregated neighborhoods with the help of the local realty agencies.<sup>38</sup> These realty agencies would sell homes to Mexican Americans in a particular part of town.<sup>39</sup>

Nearby, Weslaco enacted municipal ordinances that forced Mexican Americans to live in a specific part of town.<sup>40</sup> The residential segregation throughout these towns often had a common result. Anglo-American neighborhoods consisted of nice homes, paved streets, and working sewer lines, while Mexican-American homes consisted of shacks, dirt roads and outhouses.<sup>41</sup>

Mexican Americans living in San Antonio also suffered from racially restrictive covenants. Racially restrictive covenants played a major role in creating this ethnic divide by forcing Mexican-American families into San Antonio's west-side neighborhoods.<sup>42</sup> For generations, Mexican Americans were often treated with social inequality.<sup>43</sup> Mexican Americans in San Antonio were prevented from buying homes in certain areas.<sup>44</sup> During the late 1800s, Mexican Americans, who were servants in the wealthy neighborhoods in San Antonio, were not allowed to walk the

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36. DAVID MONTEJANO, *ANGLOS AND MEXICANS IN THE MAKING OF TEXAS, 1836-1986*, at 163 (1987) (describing how the growth of the agricultural industry helped to create new towns that were segregated into Mexican and Anglo areas).

37. *Id.* at 167 (describing the various instances in which towns instituted segregation in their own town charters).

38. *Id.* (providing an example how residential segregation was ensured through the sales practices of the McAllen Real Estate Board).

39. *Id.*

40. *Id.* (describing an ordinance that the town of Weslaco enacted to keep Mexican-American neighborhoods in close proximity to industrial complexes).

41. *Id.* (describing the common result of residential segregation in Texas towns). See also GARCIA, *supra* note 33, at 39.

42. ROSALES, *supra* note 33, at 5. See also Gambitta et al., *supra* note 2, at 141 (stating how restrictive racial covenants separated Mexican Americans and Anglos).

43. See GARCIA, *supra* note 33, at 28 (describing the social and economic segregation Mexican Americans experienced). See generally Gambitta et al., *supra* note 2, at 142 (describing the social, political, and economic inequality experienced by Mexican Americans).

44. Brischetto, Cotrell & Stevens, *supra* note 1, at 76 (describing how many San Antonio neighborhoods maintained racially restrictive deeds). See also DONALD E. EVERETT, *SAN ANTONIO'S MONTE VISTA 8* (1999) (quoting a 1907 San Antonio newspaper article, describing how newcomers to San Antonio would appreciate the high class suburban property in restricted districts).

streets in those neighborhoods after certain hours each day.<sup>45</sup> During the 1940s, many homes in the northern part of San Antonio contained deed restrictions or racial covenants that prevented the owner from selling to a person of Hispanic descent.<sup>46</sup> These racially restrictive covenants had a devastating impact on Mexican Americans living in San Antonio's west-side neighborhoods. In the 1930s these segregated neighborhoods had high rates of tuberculosis, venereal disease, and infant mortality.<sup>47</sup> In 1939, the San Antonio Housing Authority built the nation's first public housing project on the west side of San Antonio that housed only Mexican Americans.<sup>48</sup> By 1939, San Antonio's west-side neighborhoods were one of the "most extensive slum areas anywhere in the world."<sup>49</sup>

Mexican Americans make up more than half of San Antonio's population.<sup>50</sup> Although Mexican culture and customs have influenced San Antonio's cultural scene, Anglo Americans have dominated the political and economic structure.<sup>51</sup> Consequently, Mexican Americans have experienced social and political inequality.

### III. THE LAW OF RACIALLY RESTRICTIVE COVENANTS

Racially restrictive covenants played a major role in contributing to residential segregation. In many instances, white property owners created restrictive deed covenants to exclude people of color from white neighborhoods.<sup>52</sup> During the 1910s and 1920s, state courts upheld and

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45. DIANE CAPITO & MARK WILLIS, *SAN ANTONIO OF FOOT 112* (1993).

46. See generally *Richardson v. Austin*, 278 S.W. 513, 514 (Tex. Civ. App.—San Antonio 1925) (describing an actual deed covenant that stipulated that the property should not be sold to "Mexicans or Negroes"). See also *Brischetto, Cotrell & Stevens, supra* note 1, at 76 (describing the restrictive covenants in deeds throughout San Antonio); *Gambitta et al., supra* note 2, at 141 (stating that restrictive covenants help preserve segregation in San Antonio).

47. See *ROSALES, supra* note 33, at 5 (describing the unhealthy living conditions that existed in San Antonio's west-side neighborhoods while racially restrictive covenants were being enforced).

48. See Jeanee Russell, *Integration Difficult for San Antonio Housing Authority; Local Officials Cites Neighborhood Ties*, *SAN ANTONIO EXPRESS-NEWS*, Apr. 2, 2000, at B1 (stating the San Antonio Housing Authority segregated its housing projects by building the Victoria Court housing project for Anglos and the Wheatley and Lincoln housing projects for African Americans).

49. *GARCIA, supra* note 33, at 39.

50. *Brischetto, Cotrell & Stevens, supra* note 1, at 75 (stating the demographic makeup of San Antonio).

51. *Brischetto, Cotrell & Stevens, supra* note 1, at 75.

52. *Martinez, supra* note 7, at 569 (describing how deed covenants were used to create segregated housing).

enforced these racially restrictive covenants.<sup>53</sup> State courts applied the Due Process Clause of the Fourteenth Amendment and the Rule Against Restraints on Alienation to determine if a racially restrictive covenant was valid.<sup>54</sup> These state courts often held that preventing a black family from moving into a white neighborhood did not violate the Due Process Clause of the Fourteenth Amendment or the Rule Against Restraints on Alienation.<sup>55</sup> Simply stated, the enforcement of these racially restrictive covenants forced non-Anglo families to live in communities that were residentially segregated.

Although most state courts agreed that covenants restricting alienation of property were void,<sup>56</sup> some courts upheld covenants that restricted alienation to non-Anglo families.<sup>57</sup> Sadly, some state courts across the country upheld deed provisions that prevented black families from living in white neighborhoods.<sup>58</sup> The following cases illustrate the hypocritical and flawed reasoning state courts used to uphold racially restrictive covenants. Although many of the cases discussed involve African-American litigants,<sup>59</sup> these rulings also applied to Mexican Americans and other non-white families throughout the 1920s, 1930s and 1940s.

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53. *Liberty Annex Corp. v. City of Dallas*, 289 S.W. 1067, 1069 (Tex. App. 1926) (upholding racially restrictive covenants).

54. Arthur T. Martin, *Segregation of Residences of Negroes*, 32 MICH. L. REV. 721 (1934) (describing the standards courts used to determine whether a racially restrictive covenant was valid).

55. See generally *Los Angeles Inv. Co. v. Gary*, 186 P. 596 (Cal. 1919) (upholding a racially restrictive covenant); *Fairchild v. Raines*, 143 P.2d 528 (Cal. Dist. Ct. App. 1944); *Clark v. Vaughan*, 292 P. 783 (Kan. 1930); *Meade v. Dennistone*, 196 A. 330 (Md. 1938); *Lyons v. Wallen*, 133 P.2d 555 (Okla. 1942); *Liberty Annex*, 289 S.W. 1067.

56. See generally *Stamey v. McGinnis*, 89 S.E. 935, 936 (Ga. 1916) (holding that words of limitation of sale are a restraint on alienation and void); *Jones v. Port Juron Engine and Thresher Co.*, 49 N.E. 700 (Ill. 1898) (finding no exceptions to restraints on alienation); *Seay v. Cockrell*, 41 S.W. 1160 (Tenn. 1909) (holding that any prohibition on selling property is a restraint on alienation and void).

57. Martin, *supra* note 54, at 735 (describing how courts allowed a restriction on alienation if the restriction was limited in time duration). See generally *McGinnis*, 88 S.E. 935 (stating that clear words of limitation are an effectual restraint on alienation); *Jones*, 49 N.E. 700 (finding no exceptions to restraints on alienation); *Cockrell*, 41 S.W. 1160 (holding that any prohibition on selling property is a restraint on alienation).

58. See generally *Gary*, 186 P. 596 (upholding a racially restrictive covenant); *Raines*, 143 P.2d 528; *Clark*, 292 P. 783; *Meade*, 196 A. 330; *Wallen*, 133 P.2d 555; *Liberty Annex*, 289 S.W. 1067.

59. See *Gary*, 186 P. 596; *Raines*, 143 P.2d 528; *Clark*, 292 P. 783; *Meade*, 196 A. 330; *Wallen*, 133 P.2d 555; *Christie v. Lyons*, 47 P.2d 275 (Okla. 1935); *Veal v. Hopps*, 80 P.2d 275 (Okla. 1938).

A. *State Courts Side-Step Traditional Doctrines Simply to Prevent Non-White Families from Living in White Neighborhoods*

In *Los Angeles Investment Company v. Gary*,<sup>60</sup> the appellant argued that the California Supreme Court should uphold his racially restrictive covenant, which prevented a black family from moving into a white neighborhood.<sup>61</sup> The appellant conveyed his lot to a third party with a deed provision stating that the third party could not sell, lease, or rent to anyone other than whites.<sup>62</sup> However, the appellee, an African-American family, argued that the racial covenant restricted alienation and should be considered void.<sup>63</sup> The family argued that the general long-standing rule regarding prohibition of alienation was based upon the public policy preference to eliminate impediments to the alienability of land.<sup>64</sup>

The *Gary* court claimed to have understood the concept that restraints on alienation are void.<sup>65</sup> Nevertheless, the court upheld the legitimacy of the racially restrictive covenant by sidestepping the traditional doctrine against restrictions on alienation.<sup>66</sup> The court agreed with the appellant, the former lot owner. The court held that the racially restrictive covenant was not a restriction on alienation.<sup>67</sup> Instead, the court reasoned that the racial covenant was a restriction on the use of property, not a restriction on the sale of property.<sup>68</sup> The court failed to explain why it believed preventing the sale of property to an African-American family was not a restriction on alienation, but rather a restriction on use of property.<sup>69</sup> As a result of the decision in *Gary*, African-American families were isolated from the rest of the community and were forced to live in deteriorated housing.<sup>70</sup> If the *Gary* court had followed case precedent and traditional property law,<sup>71</sup> the African-American family would not have been segregated from the community.

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60. See *Gary*, 186 P. 596.

61. See *id.* at 597 (upholding a racially restrictive covenant).

62. See *id.* (describing the actual covenant).

63. See *id.* (arguing that restraints on alienation are void).

64. See *id.* See also RALPH E. BOYER ET AL., *THE LAW OF PROPERTY: AN INTRODUCTORY SURVEY* 144 (4th ed. 1991). The general rule prohibiting alienation is based upon a public policy preference to eliminate impediments to the alienability of land. See *id.*

65. See *Gary*, 186 P. at 597.

66. See *id.*

67. See *id.*

68. See *id.*

69. See *id.*

70. See *id.*

71. See generally *Jones v. Port Juron Engine and Thresher Co.*, 49 N.E. 700 (Ill. 1898) (finding no exceptions to restraints on alienation); *Stamey v. McGinnis*, 89 S.E. 935, 936 (Ga. 1916) (words of limitation of sale are a restraint on alienation and void); *Seay v.*

### B. *Enforcement of Racially Restrictive Covenants in the Midwest*

In the Midwest, state courts were also upholding racially restrictive covenants during the 1910s, 1920s, 1930s and 1940s. *Lyons v. Wallen*<sup>72</sup> is another example of a state court circumventing its own case law to uphold a racially restrictive covenant.<sup>73</sup> In *Lyons*, the plaintiff sought to prevent the Wallens, a black family, from purchasing real property.<sup>74</sup> The plaintiff argued that since seventy percent of homeowners in the approximate area signed a contract restricting the sale of the lot to "person or persons of the Negro race," the court should uphold the restriction.<sup>75</sup> The Wallen family argued that the covenant placed a restraint on alienation of real property.<sup>76</sup>

The Supreme Court of Oklahoma rejected the Wallens' argument that the racially restrictive covenant was void and contrary to public policy. The Wallens cited several cases in support of their argument,<sup>77</sup> and, unlike *Gary*, the court in *Lyons* noted this use of precedent.<sup>78</sup> The Wallens cited two cases in framing their argument. First, in *Christie v. Lyons*,<sup>79</sup> the Oklahoma State Supreme Court did not enforce a racially restrictive covenant because only eighty percent of the homeowners signed the agreement to create the restrictive covenant, which was not enough to uphold the restriction.<sup>80</sup> The second case cited was *Veal v. Hopps*.<sup>81</sup> In *Veal*, the Oklahoma State Supreme Court also refused to enforce a racially restrictive covenant because less than two-thirds of the white owners signed the contract that created the restriction.<sup>82</sup>

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Cockrell, 41 S.W. 1160 (Tenn. 1909) (holding that any prohibition on selling property is a restraint on alienation and void).

72. *Lyons v. Wallen*, 133 P.2d 555 (Okla. 1942).

73. See generally *id.*

74. See *id.* at 556.

75. *Id.* (describing a racially restrictive covenant that was used to prevent a black family from living in a white neighborhood).

76. See *id.* at 557 (describing the court's ability and willingness to enforce a racially restrictive covenant on real property).

77. See generally *Christie v. Lyons*, 47 P.2d 275 (Okla. 1935) (citing cases supportive of the Wallens' argument); see also *Veal v. Hopps*, 80 P.2d 275 (Okla. 1938) (holding racially restrictive covenant not binding since not enough white home owners agreed to the restrictive covenant when it was first enacted).

78. See *Wallen*, 133 P.2d at 557 (describing the court's ability to enforce a racially restrictive covenant on real property).

79. *Christie*, 47 P.2d 128.

80. See *id.* at 129 (providing an example of how the Oklahoma State Supreme Court would not enforce an agreement by home owners to create a racially restrictive covenant).

81. *Hopps*, 80 P.2d 275.

82. See *id.* at 278 (describing an example of the Oklahoma Supreme Court not enforcing an agreement by home owners to create a racially restrictive covenant, because the contract required nine-tenths of the lot owners to sign, which had not occurred).

Again, as in *Gary*, the *Lyons* court issued a ridiculous ruling against the African-American family. Although the court noted that the law did not favor covenants restricting the sale of land, the court nonetheless found the covenant enforceable where the "intention of the parties [was] clear."<sup>83</sup> As in *Gary*, this court's reasoning appeared hypocritical and flawed when it chose to set aside its own laws and precedents simply to prevent a black family from living in a white neighborhood.

C. *By Enforcing Racially Restrictive Covenants State Courts Refuse to Recognize Constitutional Rights of Non-White Citizens*

State courts of the eastern United States were also upholding deed restrictions preventing blacks from living in white neighborhoods. *Meade v. Dennistone*<sup>84</sup> is another clear example of a state court setting aside its own law and precedent to prevent African Americans from moving into a white neighborhood.<sup>85</sup> In *Meade*, the appellee, Dennistone, tried to enjoin an African-American family from occupying a house in Baltimore, Maryland.<sup>86</sup> Dennistone was a long-time resident of the neighborhood and based his claim on the ground that he, along "with fifteen other owners of property in the 2200 block of Barclay," agreed to create a racially restrictive covenant that did not allow "Negroes" to use or occupy property in the surrounding area.<sup>87</sup> The African-American family argued that the restraint on alienation denied their right to equal protection under the Fourteenth Amendment.<sup>88</sup> The court, however, disagreed. The court based its ruling on the notion that the constitutional amendments do not prohibit private individuals from entering into contracts regarding the control of their property.<sup>89</sup> Furthermore, the court reasoned that restrictions on alienation are only repugnant when the covenant tends to harm the estate's value.<sup>90</sup> In this case, the court believed that the racially restrictive covenants did not devalue the estate.<sup>91</sup> The court finally concluded that the "law is powerless in eradicating racial difficulties between individuals,"<sup>92</sup> and that the government should not try to interfere in the

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83. *Wallen*, 133 P.2d at 557 (stating that courts can enforce racially restrictive covenants).

84. 196 A. 330 (Md. 1938).

85. *See id.* (noting that the Maryland Supreme Court refused to allow an African-American family to live in a white neighborhood).

86. *See id.* (describing the location of the restrictive covenant).

87. *Id.* at 331 (describing the language used in the covenant).

88. *Id.* at 333 (describing Meades' argument that the contract violated their constitutional rights).

89. *See id.* at 334.

90. *See id.*

91. *See id.* at 335.

92. *Id.*

private dealings between individuals.<sup>93</sup> The *Mead* court not only set aside its own case law, but also side-stepped constitutional issues simply to prevent an African-American family from moving into a white neighborhood. As in *Lyons* and *Gary*, the court in *Mead* upheld a deed provision that prevented an African-American family from living in a white neighborhood, perpetuating residential segregation.

D. *Under State Court Rulings, Racially Restrictive Covenants Did Not Violate the Due Process Rights of Non-White Citizens*

There have been several other instances in which state courts have circumvented constitutional guarantees and denied individuals their constitutional rights. Often, when dealing with a due process challenge, state courts would reason that since the state was not the primary party engaged in discrimination, the restrictive covenant did not constitute state action and therefore did not violate due process rights.<sup>94</sup>

For example, in *Fairchild v. Raines*,<sup>95</sup> the California State Supreme Court did not take into account whether the due process rights of the appellee, a black family, were violated if the racially restrictive covenant was upheld.<sup>96</sup> The plaintiffs, including Fairchild, tried to enjoin Raines from occupying a lot in the city of Pasadena.<sup>97</sup> The appellant based his argument on the ground that a restrictive covenant stipulated that the lots shall be limited and restricted to occupancy by "persons of the Caucasian race."<sup>98</sup> However, there was an exception to the restrictive covenant.<sup>99</sup> The exception stated that if the white occupant of a lot kept non-white servants, then the servants would not be in violation of the covenant.<sup>100</sup>

The court's reasoning did not take into account whether the racially restrictive covenant violated the Raines family's constitutional rights.<sup>101</sup> Instead, the court examined whether the white property owner suffered any monetary damage as a result of a black family living in the white neighborhood.<sup>102</sup> To help the court in its decision, it considered the testi-

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93. *See id.*

94. Martin, *supra* note 54, at 732 (stating that state courts have no difficulty finding racially restrictive covenants do not violate the Fourteenth Amendment).

95. *Fairchild v. Raines*, 143 P.2d 528 (Cal. Dist. Ct. App. 1944).

96. *Id.* at 532 (failing to consider a black family's constitutional rights).

97. *See id.* at 529 (describing the town in which the racially restrictive covenant was upheld).

98. *Id.* at 530 (describing the language of the restrictive covenants).

99. *See id.* (describing the exception as to when non-whites could occupy the lot).

100. *Id.*

101. *See generally id.* (failing to consider the constitutional rights of the African-American family in its decision).

102. *See id.* at 532 (asserting that the only issue that needed to be resolved was whether the plaintiff suffered any damage if a black family moved into the neighborhood).

mony of a real estate expert who testified that the property value around the lot would decrease by fifty percent if a black family moved into the neighborhood.<sup>103</sup> Consequently, the court held that provisions preventing a black family from occupying the property were valid and enforceable.<sup>104</sup> It appears that the court in *Fairchild* believed that the lot owner's property rights were more significant than constitutional rights afforded to non-white citizens.

Ironically, there have been cases in which racially restrictive covenants were successfully challenged. In these cases, however, courts still refused to consider whether racially restrictive covenants violated the constitutional rights of African Americans. Instead, many of these cases looked to traditional property case law to decide whether to uphold a racially restrictive covenant.

In *Clark v. Vaughan*,<sup>105</sup> the plaintiff tried to enjoin an African-American family from occupying a lot in Kansas City.<sup>106</sup> The white lot owner based his argument on the ground that the deed covenant prohibited the sale of a lot, within the approximate area, to anyone of the "African race."<sup>107</sup> However, in an unusual ruling for the time, the court sided with the defendant, a black family.<sup>108</sup> The court held that the covenant did not violate the constitutional rights of the black family.<sup>109</sup> However, the court also held that enforcing the covenant would be inequitable because African-American families already occupied many of the lots around the neighborhood.<sup>110</sup> If the court upheld the restrictive covenant, then the purpose of the covenant would not be served.

E. *Shelley v. Kraemer: A Change Occurs — Was It Too Little, Too Late?*

Courts did not strike down racially restrictive covenants until the late 1940s and early 1950s. In 1948, the Supreme Court of the United States addressed the issue of racially restrictive covenants in *Shelley v. Kraemer*.<sup>111</sup> Petitioner Shelley, an African-American family, argued that ra-

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103. See *id.* (describing the monetary damage that the plaintiff would incur if the restrictive covenant and agreement were invalidated).

104. See *id.* (upholding and enforcing a racially restrictive covenant).

105. See generally *Clark v. Vaughan*, 292 P. 783 (Kan. 1930).

106. *Id.* at 784.

107. *Id.* (describing the conditions of the racially restrictive covenant).

108. See *id.* at 786 (holding that the racially restrictive covenant should not be enforced because such enforcement would be too burdensome on the black family).

109. See *id.* at 784 (affirming the validity of racially restrictive covenants).

110. *Id.* (stating that covenants shall not be enforced if enforcement would result in an inequitable outcome).

111. *Shelley v. Kraemer*, 334 U.S. 1 (1948).



cially restrictive covenants in deeds violated their constitutional rights.<sup>112</sup> Specifically, the petitioner contended that the racially restrictive covenant violated the Equal Protection Clause of the Fourteenth Amendment.<sup>113</sup> The Supreme Court ruled in favor of the petitioners and held that enforcement of racially restrictive covenants was unconstitutional.<sup>114</sup> However, it is important to note that the *Shelley* Court did not specifically renounce racially restrictive covenants. The Court held that racially restrictive covenants alone did not violate constitutional rights.<sup>115</sup> Rather, the judicial enforcement of racially restrictive covenants would violate the petitioner's rights because it constituted state action.<sup>116</sup> The Court further held that the state cannot deny an individual's right to due process under the Fourteenth Amendment through state action.<sup>117</sup> The *Shelley* decision seemed to influence other challenges to racially restrictive covenants.<sup>118</sup> Courts throughout the nation cited to *Shelley* in racially restrictive covenant cases.

Texas courts also began to follow the *Shelley* ruling. After 1948, Texas courts held that racially restrictive covenants were not enforceable because such enforcement would constitute state action. However, prior to 1948, Texas state courts had no problem enforcing racially restrictive covenants. The enforcement of these covenants had a negative effect on the Mexican-American community. The ruling in *Shelley v. Kraemer* was perhaps too little, too late.

The *Shelley* decision was influential in a San Antonio case that dealt with racially restrictive covenants and a Mexican-American family.<sup>119</sup> Shortly after the *Shelley* decision, in *Clifton v. Puente*, the Texas Fourth of Appeals held that it could not enforce racially restrictive covenants.<sup>120</sup> In *Clifton*, the appellant sought a judgment in trespass to try title by arguing that Mr. Puente's chain of title contained a racially restrictive covenant. The *Clifton* court looked to the *Shelley* ruling and held that enforcement of the racially restrictive covenant would constitute state action. As a result, the *Clifton* court struck down the covenant.<sup>121</sup>

The *Clifton* decision, however, may have also been too little, too late. Between the 1910s and the 1940s, courts throughout the nation upheld

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112. See generally *id.*

113. *Id.* at 7-8.

114. *Id.* at 20.

115. *Id.*

116. *Id.*

117. *Id.*

118. See *Matthews v. Andrade*, 198 P.2d 66 (Cal. App. 1948).

119. See *Clifton v. Puente*, 218 S.W.2d 272 (Tex. Civ. App.-San Antonio 1948).

120. *Id.*

121. *Id.* at 274.

racially restrictive covenants. The enforcement of these racially restrictive covenants during the 1910s, 1920s, 1930s, and 1940s have had a lasting effect on many Mexican-American communities and the effects of these racially restrictive covenants remain visible.

The patterns of *de facto* segregation still exist in San Antonio today.<sup>122</sup> As San Antonio has grown, decisions to build the University of Texas at San Antonio and the University of Texas Health Science Center toward the city's north side, while simultaneously concentrating public housing projects on the west side, were based on race separation.<sup>123</sup> Sadly, classrooms throughout San Antonio reflect the present-day segregation among Mexican Americans, African Americans, and Anglo Americans. Churchill High School, on San Antonio's north side, has an Anglo student population of seventy-six percent and a Mexican-American student population of eighteen-percent.<sup>124</sup> San Antonio's primary west-side school district, the Edgewood Independent School District, has a student population consisting of ninety-six percent Mexican Americans.<sup>125</sup>

#### IV. THE LONG TERM IMPACT OF RACIALLY RESTRICTIVE COVENANTS ON MEXICAN AMERICANS IN SAN ANTONIO

The poverty that many Mexican Americans experience today is partly the result of residential segregation created by racially restrictive covenants. The enforcement of racially restrictive covenants has had a continuing negative effect on the Mexican-American community. Today, San Antonio is still divided geographically along ethnic lines. This type of residential segregation has helped perpetuate the poverty that many Mexican Americans and other minorities experience. Traditionally, Mexican Americans living in San Antonio have been less educated, poorer, and have lived in worse housing conditions than their Anglo-American counterparts.<sup>126</sup> In addition, studies conducted in the 1970s showed that Mexican-American neighborhoods received lower levels of municipal ser-

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122. Brischetto, Cotrell & Stevens, *supra* note 1, at 76.

123. See Jeanne Russell, *S.A. Reflects Resegregation Trend*, SAN ANTONIO EXPRESS-NEWS, June 12, 1999, at A15 (citing an interview with Al Kauffman, regional counsel for the Mexican-American Legal Defense and Educational Fund), available at 1999 WL 100169390.

124. Editorial, *School Segregation: A Giant Step Back*, SAN ANTONIO EXPRESS-NEWS, June 21, 1999, at 21A.

125. See Student Information, Edgewood News (Edgewood Independent School District, San Antonio, Tex.), Jan. 2001, at 11.

126. See ROSALES, *supra* note 33, at 5 (describing Mexican Americans as predominantly poor or lower middle class); Brischetto, Cotrell & Stevens, *supra* note 1, at 76 (describing the social inequality Mexican Americans experience).

vices than Anglo-American neighborhoods.<sup>127</sup> For example, west-side neighborhoods often did not receive the same federal and state government funding as north-side neighborhoods for street paving, drainage systems, and public libraries.<sup>128</sup>

Importantly, many of the same social problems that Mexican Americans faced when racial covenants were enforced are still present today.<sup>129</sup> Residential mobility among Mexican Americans is lower in San Antonio than in other cities, such as Los Angeles.<sup>130</sup> While many of the old racially restrictive neighborhoods have been integrated, the effects of these restrictive covenants had a lasting impact on the social and economic status of Mexican Americans.<sup>131</sup> Since many Mexican-American families were forced to live on the west side of San Antonio, they were unable to take part in the same educational and occupational opportunities as many white citizens.<sup>132</sup> Instead, Mexican-American families were forced to send their children to poorly funded schools, where they subsequently received a poor education.<sup>133</sup>

For generations, San Antonio has segregated its schools in a manner "that parallels the development of segregated neighborhoods."<sup>134</sup> As a result, many Mexican Americans were not allowed to experience mainstream American ideas and values.<sup>135</sup> Mexican Americans in San Antonio and throughout the Southwest were prevented from assimilating into mainstream America. They were not introduced to values that most white Americans believe are important. These American values include "achievement, efficiency, material comfort, . . . equality, and the

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127. Brischetto, Cotrell & Stevens, *supra* note 1, at 76.

128. *Id.*

129. RODOLFO ROSALES, PERSONALITY AND STYLE IN SAN ANTONIO POLITICAS: HENRY CISNEROS AND BERNARDO EURESTE, 1975-1985, at 3 (David Montejano ed., Univ. of Tex. Press 1999).

130. See GREBLER ET AL., *supra* note 1, at 307 (comparing the residential mobility of Los Angeles and San Antonio).

131. Brischetto, Cotrell & Stevens, *supra* note 1, at 76 (describing how de facto segregation continues to exist today).

132. See GARCIA, *supra* note 33, at 38.

133. ROSALES, *supra* note 33, at 5 (stating that racially restrictive covenants forced Mexican Americans to attend inferior schools); Harris, *supra* note 3, at 71 (describing how a lack of integration has resulted in social, economic, and educational inequality for Mexican Americans).

134. Gambitta et al., *supra* note 2, at 141 (stating that white neighborhoods created independent school districts while Hispanic neighborhoods did not); Russell, *supra* note 123.

135. Gambitta et al., *supra* note 2, at 141 (describing how the racial covenants preserved racial homogeneity in schools).

supremacy of science and reason over faith."<sup>136</sup> As a result, Mexican Americans are less well equipped to achieve economic and social prosperity in America.

A. *Racially Restrictive Covenants and Their Long-Term Effects on the Education of Mexican Americans in San Antonio*

Traditionally, Mexican Americans throughout South Texas have not attained the same educational levels as their Anglo counterparts.<sup>137</sup> Texas state courts have played a direct role in creating and maintaining this inequality. In 1930, a Texas state court held, in *Independent School v. Salvatierra*, that a local school district could segregate Mexican-American students from white students.<sup>138</sup> The court relied on the testimony from the school district's superintendent regarding the reasons for separating the "Mexican" children from the Anglo children.<sup>139</sup> The superintendent testified that "Mexican" students often miss the first part of the school year because they are helping their family pick cotton. The superintendent further testified that if these "Mexican" students were placed in the same classroom with Anglo students after the school year started, the Mexican-American children would fall behind in their learning.<sup>140</sup> However, unlike the Mexican-American students, Anglo students who also picked cotton and started the school later in the school year were not forced to attend the separate class.<sup>141</sup> The court agreed with the superintendent and held that the court should avoid interference with the local government agencies within communities.<sup>142</sup>

Texas state courts have also played an indirect role in contributing to the inequality of education between Mexican-American children and Anglo-American children by enforcing racially restrictive covenants. Racially restrictive covenants have had an immense negative effect on Mexican-American educational opportunity.<sup>143</sup>

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136. See SCHAEFER, *supra* note 12, at 59 (identifying American values); ROBIN M. WILLIAMS JR., *AMERICAN SOCIETY: A SOCIOLOGICAL INTERPRETATION* 452-500 (3d ed. 1970).

137. GREBLER ET AL., *supra* note 1, at 143. See generally MOORE, *supra* note 1, at 109 (stating that the educational attainment of Mexican Americans was lower than not only whites, but other non-whites as well).

138. See generally *Ind. Sch. Dist. v. Salvatierra*, 33 S.W.2d 790 (Tex. App. 1930) (allowing the Del Rio Independent School District to segregate Mexican-American school children from white school children).

139. See *id.* at 791.

140. See *id.* at 792.

141. See *id.*

142. See *id.* at 794.

143. See ROSALES, *supra* note 33, at 5 (asserting that racially restrictive covenants isolated Mexican Americans and forced them to attend inferior schools). See generally

1. Racially Restrictive Covenants Forced Mexican Americans to Live in San Antonio's West-Side Neighborhoods

As Texas state courts upheld racially restrictive covenants, their rulings forced Mexican Americans to live in San Antonio's west-side neighborhoods. In addition, local initiatives forced Mexican-American children to attend inferior schools.<sup>144</sup> Consequently, Mexican-American families began to cluster around the Edgewood Independent School District,<sup>145</sup> which is located on the west side of San Antonio. Edgewood students had fewer library books, counselors, and course offerings.<sup>146</sup> In addition, Edgewood students achieved lower scores on standardized tests than students from affluent districts.<sup>147</sup>

Racially restrictive covenants forced Mexican-American families to live in San Antonio's west-side neighborhoods and to send their children to poorly funded schools. Mexican-American families could not live in other school districts, such as the Alamo Heights School District on San Antonio's north side.<sup>148</sup> For example, during the 1967-68 school year, Alamo Heights High School spent over two and one quarter times the amount Edgewood spent on its students.<sup>149</sup> In the 1920s and 1930s, the Edgewood School District area had a low percentage of residential covenants, thus allowing the sale of property to Mexican-American families.<sup>150</sup> San Antonio's west-side neighborhood schools also established a different curriculum from schools with Anglo children.<sup>151</sup> Mexican Americans were taught to believe that segregated education was necessary.<sup>152</sup> As a result, these poor west-side neighborhood schools did not introduce Mexican-American students to traditional American values.<sup>153</sup> These Mexican-American families had no choice but to send their children to schools where "a vocational orientation, not a professional orien-

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Gambitta et al., *supra* note 2, at 133, 134 (describing how racially restrictive covenants forced Mexican Americans to live in San Antonio's west-side neighborhoods, resulting in low property value and poor school funding).

144. ROSALES, *supra* note 33, at 5.

145. See Gambitta et al., *supra* note 2, at 141 (describing how Mexican Americans in San Antonio were forced to live within the Edgewood Independent School District).

146. See *id.* at 156.

147. See *id.*

148. See *id.* at 142.

149. See *id.* at 146.

150. See *id.* at 142-43 (describing how the Edgewood neighborhood, on San Antonio's west side, was one of the few places Mexican Americans did not encounter racially restrictive covenants).

151. See GARCIA, *supra* note 33, at 177 (describing the educational conditions in west-side neighborhoods).

152. See *id.*

153. *Id.*

tation, segregation, not integration, were established as the philosophical cornerstones for the Mexican student population."<sup>154</sup>

2. Racially Restrictive Covenants Indirectly Forced Generations of Mexican Americans Living in San Antonio to Attend Poorly Funded and Inadequate Schools

The enforcement of racially restrictive covenants contributed to the poor education Mexican-American children received in San Antonio. Although it is difficult to provide clear and convincing proof that segregation creates inferior schooling, research shows that educational segregation provides a pattern of inadequate funding, high dropout rates, and few qualified teachers.<sup>155</sup> An increasing number of Mexican-American students are attending public schools isolated from Anglo students.<sup>156</sup> These public schools tend to have poor funding and low standards of academic performance.<sup>157</sup> Like African-American children in the South, who were educated in isolation from Anglo-American children,<sup>158</sup> Mexican Americans continue to face segregation.

Generally, Mexican Americans are most likely to be segregated into high poverty schools.<sup>159</sup> Today, many west-side San Antonio neighborhood schools, which teach predominately Mexican-American children, still experience a lack of integration, poor funding, and generally inadequate schooling.<sup>160</sup> Today, ninety-six percent of the Edgewood Independent School District student population is Mexican-American.<sup>161</sup> The inability of San Antonio's west-side neighborhood schools to provide sufficient funds for its students is perhaps the most pervasive effect racially restrictive covenants have had on the Mexican-American community. The Edgewood Independent School District, which many Mexican-American children were forced to attend because of racially restrictive covenants, has always spent disproportionately less on their students than the Alamo Heights Independent School District, which is on San

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154. *Id.*

155. See Russell, *supra* note 123.

156. See *id.* (citing to a trend that Hispanic and African-American students attend public schools that are isolated from Anglo students).

157. See *id.*

158. See Deborah Mayo-Jeffries, *Discrimination in the Education Process Based on Race*, 21 N.C. CENT. L.J. 21 (1995).

159. See Russell, *supra* note 123.

160. See Gambitta et al., *supra* note 2, at 156. See generally J. Steven Farr & Mark Trachtenberg, *The Edgewood Drama: An Epic Quest for Education Equity*, 17 YALE L. & POL'Y REV. 607 (1999) (describing the lack of funding the Edgewood Independent School District has experienced).

161. See Newsletter, Edgewood Independent School District (Nov. 2001).

Antonio's North Side.<sup>162</sup> Wealthy districts, such as the Alamo Heights School District, can spend up to nine times more on each student than poorer school districts like Edgewood.<sup>163</sup>

This disproportion in wealth can be seen in the everyday activities at each school district. For example, at Edgewood Elementary School, a janitor has to rip bats from the eaves of the school, while a custodian at Alamo Heights High School has to check the chlorine level of the school's indoor, Olympic-size pool.<sup>164</sup> During the 1970s, almost half the teachers at Edgewood Elementary School lacked official state certification, while rare vacant teaching positions in the Alamo Heights School District would attract several well-qualified applicants.<sup>165</sup> In addition, Edgewood has had a difficult time recruiting quality teachers when Alamo Heights pays its teachers thousands of dollars more per year than Edgewood.<sup>166</sup> During the 1999-2000 school year, the average salary for an Edgewood School District teacher was \$37,747, while in the Alamo Heights School District, the average teacher salary was \$44,590.<sup>167</sup>

The Edgewood and Alamo Heights school districts serve as a constant reminder of the failure of the Texas school finance program.<sup>168</sup> Simply put, students living in San Antonio's west-side neighborhoods receive considerably less funding than students living in north-side neighborhoods. Although racially restrictive covenants are no longer enforced, their negative effects are still present. The disparities in education have perpetuated the racial and economic disparity that has characterized San Antonio for generations.<sup>169</sup> These negative effects are visible in the inequitable funding and in the quality of education that the west-side neighborhoods receive when compared to the north-side neighborhoods.

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162. Farr & Trachtenberg, *supra* note 160, at 607 (emphasizing the huge disparity between the Edgewood Independent School District and the Alamo Heights Independent School District).

163. *See id.* at 608 (describing the disproportional amount the Texas school finance system allows among different school districts).

164. *See id.* at 607 (describing the results of disproportional school funding).

165. *See id.*

166. *See id.* at 608.

167. Texas Education Agency: 1999-2000 Staff Salaries and FTE count: Alamo Heights District (January 3, 2001), available at <http://www.tea.state.tx.us/adhocrp/ad-peboo.html>.

168. *See Gambitta et al., supra* note 2, at 156; Farr & Trachtenberg, *supra* note 160, at 607.

169. *See generally* Gambitta et al., *supra* note 2, at 156 (describing the long-term effects of the educational disparities).

B. *Racially Restrictive Covenants and the Long Term Effect of Isolating Mexican Americans from American Values*

By forcing Mexican Americans to live on San Antonio's west side, racially restrictive covenants prevented Mexican Americans from assimilating mainstream American values. Like many other minority groups, Mexican Americans generally have found it difficult to assimilate into mainstream American society.<sup>170</sup> Mexican Americans do assimilate to some degree. However, full political and economic assimilation eludes the Mexican-American community.<sup>171</sup> The measure of an immigrant group's assimilation into American society can be determined by the level of segregation that the particular immigrant group still experiences.<sup>172</sup> San Antonio's close proximity to Mexico makes it possible for many Mexican Americans to maintain a close connection to their cultural heritage.<sup>173</sup> However, this close cultural connection inhibits social and occupational integration.<sup>174</sup>

Since schools are one of the most important socializing institutions in our society,<sup>175</sup> they have great influence on the assimilation of Mexican-American children into mainstream American culture. American mainstream values emphasize material comfort and progress by believing that living conditions improve through hard work.<sup>176</sup> Racially restrictive covenants prevented Mexican Americans from being indoctrinated into these mainstream American ideals. Instead, Mexican Americans were segregated into San Antonio's west-side neighborhoods and isolated from the predominant American culture.<sup>177</sup>

Generally, lack of education and the failure to assimilate has had a negative role in occupational integration.<sup>178</sup> Studies have shown that the best academic performers among Mexican-American students are those "who have been most thoroughly socialized" into American culture.<sup>179</sup>

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170. See Kevin R. Johnson, "Melting Pot" Or "Ring of Fire"?: Assimilation and the Mexican-American Experience, 10 LA RAZA L.J. 173, 194 (1998); Rachel F. Moran, *Forward-Demography and Distrust: The Latino Challenge to Civil Rights and Immigration Policy in the 1990s and Beyond*, 8 LA RAZA L.J. 1, 13-24 (1995); Villarreal, *supra* note 12, at 1196-1215.

171. Johnson, *supra* note 170, at 194.

172. MOORE, *supra* note 1, at 109.

173. Harris, *supra* note 3, at 57.

174. *Id.*

175. Villarreal, *supra* note 12, at 1200.

176. See SCHAEFER, *supra* note 12, at 59 (identifying traditional American values); WILLIAMS JR., *supra* note 136, at 452-500.

177. See generally Gambitta et al., *supra* note 2, at 141-42.

178. MARIO BARRERA, RACE AND CLASS IN THE SOUTHWEST 145 (1979).

179. GREBLER ET AL., *supra* note 1, at 171 (describing how assimilation into American society helps Mexican-American students in schools).



Today, many Mexican Americans in San Antonio's west-side neighborhoods still maintain a strong, traditionally Mexican culture. Many Mexican Americans are not able to identify with mainstream American values.<sup>180</sup> Some of these values include achievement, efficiency, material comfort, equality, and the supremacy of science and reason over faith.<sup>181</sup> The lack of exposure to mainstream American values has inhibited the academic performance of Mexican-American students in San Antonio's west-side neighborhoods.

## V. PROPOSAL

### A. *How Do We Remedy the Damage That Racially Restrictive Covenants Inflicted on Mexican Americans in San Antonio?*

Racially restrictive covenants have indirectly contributed to the poor education level of many Mexican Americans living in San Antonio's west-side neighborhoods. In addition, racially restrictive covenants have also contributed to the isolationism that many Mexican Americans in San Antonio experience. The end result is that children are favored or disfavored on the basis of geography because of previous discrimination based on ethnicity.<sup>182</sup> It is unjust for any child in America to be deprived of educational and economic opportunities simply because the child lives in a neighborhood that was negatively affected by racially restricted covenants. The issue then becomes how to correct the effect of these old racially restrictive covenants?

One way to remedy the negative effects of these restrictive covenants is to introduce a proposal that helps undo the isolationism and poor educational conditions that Mexican Americans in San Antonio experience today. As stated earlier, the negative effects of racially restrictive covenants are still visible in the inequitable availability of quality education throughout San Antonio. The enforcement of racially restrictive covenants forced Mexican Americans to live in San Antonio's poor, west-side neighborhoods. The public schools in San Antonio's west-side neighborhoods have received far less funding and have far less qualified teachers than public schools in the north-side neighborhoods. Perhaps if poor west-side neighborhood schools were given the same amount of funding and the same ability to pay qualified teachers as north-side neigh-

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180. Johnson, *supra* note 170, at 194.

181. See SCHAEFER, *supra* note 12, at 59 (identifying American values); WILLIAMS JR., *supra* note 136, at 452-500.

182. See Mark G. Yudof, *School Finance Reform: Don't Worry, Be Happy*, 10 REV. LITIG. 585 (1991) (asserting that poor school districts have to exert higher tax efforts than rich school districts).

borhood schools, the long term negative effects of racially restrictive covenants would be lessened.

One of the most effective potential remedies would be to reform and consolidate the Texas educational system so it would provide an equally funded education, in order to provide the same curriculum to all citizens of San Antonio and throughout Texas. Throughout the country, however, state courts have faced challenges to the methods by which states fund public education.<sup>183</sup> These state courts have seen various arguments attacking the method of funding public schools through property tax.<sup>184</sup> One such argument against the use of property tax to fund public schools contends that the state's equal protection clause should not allow difference in property wealth to affect different public school systems.<sup>185</sup>

## B. *Eliminating Independent School Districts and Consolidating the Texas Educational System*

Eliminating independent school districts and consolidating public schools under an effective state funded system would serve to lessen or eliminate the long-term effects of racially restrictive covenants. As stated earlier, Mexican Americans in San Antonio were forced to live in deteriorated neighborhoods and to send their children to under-funded public schools that provided an inadequate education. Mexicans Americans, along with every other citizen in San Antonio, need a reformed education system that will undo the harm racially restrictive covenants still perpetuate.

### 1. General Concepts of Consolidation

Consolidating school districts is potentially one of the most effective ways to improve school performance.<sup>186</sup> Consolidation, however, has proven to be a more popular concept among academics than with legislators and their constituents.<sup>187</sup> Nevertheless, there are advantages and dis-

183. See Peter Enrich, *Leaving Equality Behind: New Direction in School Finance Reform*, 48 VAND. L. REV. 101, 104 (1995) (describing how different states are having problem providing equal funding); Farr & Trachtenberg, *supra* note 160, at 608-09; Keith Henderson, *In Many States, Lawsuits Contest the Fairness of School Funding*, CHRISTIAN SCI. MONITOR (Mar. 23, 1993), at 1.

184. See Enrich, *supra* note 183, at 106.

185. See *id.* at 107 (stating the various arguments against the use of property tax to fund public schools, including the contention that the state's duty to provide a public school system cannot be satisfied through property tax revenue).

186. See Susan R. Stockdale, *School Consolidation and Minnesota's Fire Safety Inspection Law: A Step Too Far*, 11 LAW & INEQ. 117 (1992).

187. See Weldon Beckner & Linda O'Neal, *A New View of Smaller Schools*, 64 NASSP BULL. 1, 5 (1980); Stockdale, *supra* note 186.

advantages to consolidating school districts into one state agency.<sup>188</sup> Commonly cited advantages of consolidation include (1) improved and enlarged curriculum, (2) increased administrative efficiency, and (3) an increased likelihood that a school will win state or national recognition.<sup>189</sup> The disadvantages include (1) an increase in discipline problems, (2) increase in dropouts, and (3) decreased opportunities for leadership roles.<sup>190</sup>

## 2. A Brief History of the Texas School System

### a. Using Property Tax Revenue to Fund School Districts

The Texas Constitution provides a mandate for the state to provide public schools.<sup>191</sup> Under Article VII of the Texas Constitution, "it shall be the duty of the Legislature of the State to establish and make suitable provisions for the support and maintenance of an efficient system of public free schools."<sup>192</sup> However, Texas State courts have never clearly defined the phrase "efficient system of public free schools."<sup>193</sup>

The Texas public school system financed its educational system through property taxes.<sup>194</sup> Since the state lacked sufficient organization to administer a state run school system,<sup>195</sup> the state turned to property taxes to fund public schools.<sup>196</sup> In 1845, Article X of the Texas Constitution directed the legislature to fund public schools through property taxes.<sup>197</sup> By 1848, the Texas Legislature had obtained the plenary power to grant municipalities authority to levy a local property tax for school support.<sup>198</sup> Many cities then obtained permission for the Texas Legislature to organize their schools as independent schools districts.<sup>199</sup>

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188. See Stockdale, *supra* note 186, at 121.

189. See *id.* at 122.

190. See *id.* at 122-23.

191. See Farr & Trachtenberg, *supra* note 160, at 608.

192. TEX. CONST. art. VII, § 1.

193. Farr & Trachtenberg, *supra* note 160, at 607 (describing the ambiguity in the Texas Constitution regarding its mandate for an efficient school system).

194. See *id.* at 613.

195. See Billy D. Walker, *Intent of the Framers in the Education Provisions of the Texas Constitution of 1876*, 10 REV. LITIG. 625, 630 (1991) (citing Arthur Lynn, *Property-Tax Development: Selected Historical Perspectives*, in PROPERTY TAXATION, U.S.A. 7, 13 (R. Lindholm ed., 1967)) (noting that the state could not administer a school program and was not willing to develop a tax system to support public schools).

196. See Farr & Trachtenberg, *supra* note 160, at 613 (explaining Texas' use of property tax to fund schools); Walker, *supra* note 195, at 630 (describing how the Texas Legislature used property taxes to fund public school education).

197. See TEX. CONST. of 1845, art. X, § 2.

198. See Walker, *supra* note 195, at 636.

199. See *id.* at 637.

The 1948 and 1949 Gilmer-Akin proposals required public schools to be financed through local property tax efforts.<sup>200</sup> The State also provided aid to compensate for the variation in local tax bases.<sup>201</sup> The Gilmer-Akin proposal essentially provided a guaranteed minimum for all school districts. However, under Texas law, local school districts are allowed to enrich their programs beyond the minimum guarantee.<sup>202</sup> As a result, rich school districts in San Antonio can tax a low percentage, but spend large amounts, while poor school districts in San Antonio must tax at a high percentage in order to merely spend low.<sup>203</sup> For example, during the 1985-86 school year, the Alamo Heights Independent School District spent \$570,109 per student, while the Edgewood Independent School District spent \$38,854 per student.<sup>204</sup> In 2000, the Alamo Heights district, with a 4,400 student population, had a \$40 million dollar budget, while the 57,500 student San Antonio School district had a budget of \$389 million dollars.<sup>205</sup>

#### b. Trying to Solve the Disparity in School Funding

While some state legislators realized the problem with this funding method, the Texas Legislature was unsuccessful in passing legislation to eliminate the disparity.<sup>206</sup> The Texas Supreme Court has struck down three different legislative attempts designed to eliminate the disparities of school funding.<sup>207</sup>

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200. See William P. Hobby & Billy D. Walker, *Legislative Reform of the Texas Public School Finance System, 1973-1991*, 28 HARV. J. ON LEGIS. 379, 382 (1991) (describing how the Gilmer-Akin proposal provided a guaranteed minimum for all students from property tax funds).

201. See Farr & Trachtenberg, *supra* note 160, at 608; Hobby & Walker, *supra* note 200, at 382-83.

202. See BILLY D. WALKER & DANIEL T. CASEY, *THE BASIS OF TEXAS PUBLIC SCHOOL FINANCE* 85 (6th ed. 1996); Farr & Trachtenberg, *supra* note 160, at 613.

203. See *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391, 393 (Tex. 1989); see also Farr & Trachtenberg, *supra* note 160, at 615.

204. See *Kirby*, 777 S.W.2d at 392.

205. See Sharon K. Hughes, *AHSD and Robin Hood: Arrow of Outrageous Fortune?*, SAN ANTONIO EXPRESS-NEWS, Apr. 24, 2000, at B3.

206. See Joe Ball, *Efficient and Suitable Provision for the Texas Public School Finance System: An Impossible Dream?*, 46 SMU L. REV. 763, 768-80 (1992). In 1996, the Texas Legislature rushed to pass Senate Bill 1, which raised the level of per pupil expenditure. See *id.* However, the Texas Supreme Court found that Senate Bill 1 did not effect change in the school finance system and failed to meet its constitutional obligation. See *id.* In 1991, the legislature enacted a new bill, Senate Bill 351. See *id.* However, the Supreme Court rejected this bill on constitutional grounds under article VIII, section 3-e, which demands an election to levy an additional ad valorem tax. See *id.*

207. See Henry Cuellar, *Considerations in Drafting a Constitutional School Finance Plan: A Legislator's Perspective*, 19 T. MARSHALL L. REV. 83 (1993). On two separate occasions, the Texas Supreme Court held that legislative proposals violated article VII,

For example, in *Edgewood Independent School District v. Kirby* (*Edgewood I*),<sup>208</sup> the Edgewood Independent School District obtained an injunction that prevented the Texas Commissioner of Education from financing public education from property tax revenues.<sup>209</sup> However, the Texas Supreme Court did not use the Equal Protection or Due Process Clauses of the Federal Constitution in coming to its decision.<sup>210</sup> Instead, the court only decided whether the state provided an "efficient system" of education required by the Texas Constitution.<sup>211</sup> In *Edgewood I*, the Texas Supreme Court held that the gross inequalities in resources among school districts violated the state's constitutional mandate of an "efficient system."<sup>212</sup>

In response to the *Edgewood I* ruling, the Texas Legislature tried to reform the school finance system.<sup>213</sup> In *Edgewood II*,<sup>214</sup> however, the Texas Supreme Court held that the legislature's reforms did not achieve sufficient equalization.<sup>215</sup> The Legislature then drafted new legislation in response to the ruling.

In *Carrollton-Farmers Branch Independent School v. Edgewood Independent School District* (*Edgewood III*),<sup>216</sup> the Texas Supreme Court again struck down the legislature's attempt to reform the school finance system. The court held that the legislation violated a constitutional provision forbidding property taxation at the state level.<sup>217</sup> The Texas Legislature went to the drawing board one more time in the hope of reforming the school finance system.

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section 1 of the Texas Constitution which gives the legislature the duty to "establish and make suitable provision for the support and maintenance of an efficient system of public free school." *Id.* On the third occasion, the Supreme Court ruled that Senate Bill 351, which adjusted the finance system, violated other provisions of the Texas Constitution. *See id.*

208. *Kirby*, 777 S.W.2d 391.

209. *See* Albert Kauffman & Carmen Maria Rumbaut, *Applying Edgewood v. Kirby to Analysis of Fundamental Rights Under the Texas Constitution*, 22 ST. MARY'S L.J. 69, 74 (1990) (describing how the case got to court).

210. *Kirby*, 777 S.W.2d 391; *see also* Enrich, *supra* note 183, at 192.

211. *See Kirby*, 777 S.W.2d 391, 397-98; *see also* Enrich, *supra* note 183, at 192.

212. *Kirby*, 777 S.W.2d at 398; *see also* Enrich, *supra* note 183, at 192 (summarizing the ruling found in *Edgewood Independent School District v. Kirby*).

213. *See Ball*, *supra* note 206, at 768-69; Enrich, *supra* note 183, at 192.

214. *See generally* *Edgewood Ind. Sch. Dist. v. Kirby*, 804 S.W.2d 491 (Tex. 1991) (holding that Senate Bill 1 failed to provide equal access to funds to all school districts).

215. *See generally* Enrich, *supra* note 183, at 192 (summarizing the Texas Supreme Court's ruling in *Edgewood II*).

216. *See generally* *Carrollton-Farmers Branch Ind. Sch. Dist. v. Edgewood Ind. Sch. Dist.*, 826 S.W.2d 489 (Tex. 1992).

217. *See generally* Enrich, *supra* note 183, at 192 (summarizing *Edgewood III*).

In 1993, the Legislature enacted Senate Bill Seven (SB 7),<sup>218</sup> which provided a multi-tiered school finance system with four major components.<sup>219</sup> Essentially, SB 7 provided some extra funding to poor schools, while still allowing wealthier school districts to provide additional unequal revenue from the local tax bases.<sup>220</sup> In *Edgewood IV*,<sup>221</sup> the Texas Supreme Court upheld the constitutionality of SB 7. However, the *Edgewood* decisions show that intervention by the courts cannot provide effective, long-lasting solutions to deep-rooted educational controversies.<sup>222</sup> The Legislature has still been unable to solve the disparity in the state school finance system because the Texas Supreme Court never clearly defined what types of reform are constitutional.<sup>223</sup>

For the past several years, Texas lawmakers have suggested other approaches to solve the disparity in school funding.<sup>224</sup> The Texas Legisla-

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218. See Tex. S.B. 7, 74th Leg., R.S. (1995).

219. Tex. S.B. 7, 74th Leg., R.S. (1995). See also William E. Sparkman & Fred Hartmeister, *The Edgewood Saga Continues: The Texas School Finance System Is Constitutional-But Not Out of the Woods*, 101 EDUC. LAW REP. 509, 511 (1995). Senate Bill 7 contained four general components. *Id.* The first component is the "available school fund per-capita allotment," which is an annual interest from the permanent school fund and proceeds from revenues of motor fuel tax. *Id.* This first component distributes funds to rich and poor school districts. *Id.* The next component, Tier One, provides a basic allotment of \$2,300 per average daily attendance of students to each school district. *Id.* The third component, Tier Two, allows poor school districts to supplement their Tier One basic allotment with a locally determined tax rate that is equalized by the state. *Id.* The fourth component, Tier Three, allows rich school districts to provide additional local revenues from the local tax base. *Id.*

220. See Farr & Trachtenberg, *supra* note 160, at 684; Sparkman & Hartmeister, *supra* note 219, at 511 (stating that SB 7 allowed some of the wealthiest districts to retain some of their property wealth).

221. *Edgewood Indep. Sch. Dist. v. Meno*, 893 S.W. 2d 450 (Tex. 1995).

222. See generally Michael A. Rebell & Robert L. Hughes, *Schools, Communities, and the Courts: A Dialogic Approach to Education Reform*, 14 YALE L. & POL'Y REV. 99 (1996) (emphasizing that state judicial intervention throughout the country has had mixed results because courts cannot provide solutions).

223. See Allan Parker, Jr. & Michael David Weiss, *Litigating Edgewood: Constitutional Standards and Application to Educational Choice*, 10 REV. LITIG. 599, 600 (1991) (emphasizing how the Texas Supreme Court failed to define its standards for rejecting legislation that violates somewhat vague constitutional provisions).

224. See Mark G. Yudof, *School Finance Reform in Texas: The Edgewood Saga*, 28 HARV. J. ON LEGIS. 499, 500-04 (1991). The first method to solve disparity in the funding of school districts would be to consolidate school districts. *Id.* Consolidating the school districts may increase bureaucratization, however. *Id.* The second method would be for the state of Texas to assume full responsibility to relieve a state income tax and district tax revenues on a nondiscriminatory basis. *Id.* A state constitutional amendment would be required before the state could levy a state income tax. *Id.* The third approach would be to adopt a "recapture plan," which would take some funds from the wealthier school districts to give to the poor. *Id.* The fourth approach would be to combine these three approaches with a state subsidy. *Id.*

ture has slowly increased funding to aid poorer districts.<sup>225</sup> The increase in funds has had a positive influence on poor school districts.<sup>226</sup> Throughout the state, improvements in standardized test scores in poor school districts have out-paced those of middle income school districts.<sup>227</sup> On the other hand, rich school districts were not pleased with the new funding schemes proposed by the legislature.<sup>228</sup> In April 2000, the new funding formula forced the Alamo Heights School District to pay \$10.9 million back to the state to be redistributed to poorer schools.<sup>229</sup> The superintendent for Alamo Heights School District complained that the latest finance formula does not allow the rich school districts to hold on to enough revenue "to keep pace with inflation."<sup>230</sup> A huge disparity in funding still exists, however, between west-side neighborhood schools and north-side neighborhood schools.

The reason why the Texas Legislature has not solved the finance problem is because many legislators will not vote on a bill in which their district loses money.<sup>231</sup> It seems that the key to providing efficient and adequate public education "in Texas is to restructure the state's tax system to include a personal and corporate income tax."<sup>232</sup> A state income tax is very unlikely, however, given the political hostility it evokes.<sup>233</sup> As a result, "the pursuit of school finance reform inevitably becomes a struggle between state and local officials to avoid political accountability for tough and unpopular tax policies."<sup>234</sup>

Sadly, school finance reform cannot rely on the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution

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225. See William E. Sparkman & Michael P. Stevens, *Texas School Finance System Unconstitutional*, 57 ED. LAW. REP. 333 (1990) (describing the incremental remedies the Texas Legislature tried to implement).

226. See Terrence Stutz, *Extra Funding Credited with Raising Test Score: Low-Wealth Districts Tout Redistribution Program*, DALLAS MORNING NEWS, Aug. 15, 2000, at 1A (describing how sharing the wealth in school funding has helped poor school districts).

227. See *id.* (describing how the increase in school funding by the state has helped poor school districts improve on standardized tests scores).

228. See Hughes, *supra* note 205 (noting the amount of tax dollars that Alamo Heights opposed giving up).

229. See *id.* (describing how Alamo Heights had to pay to the state so the money could be redistributed to poor districts).

230. *Id.*

231. See Cuellar, *supra* note 207, at 90 (describing how "a legislator will vote for the bill that will bring the most money to his home school districts").

232. See Ball, *supra* note 206, at 801 (describing the tax consequences and deductions of a state income tax); Nancy Cotton, *The Man with the Plan: Sharp Discusses His New Idea as Comptroller*, TEX. LONE STAR, June 1991, at 18, 19.

233. Ball, *supra* note 206, at 801 (noting the unlikelihood of having a state income tax approved by voters).

234. Yudof, *supra* note 182, at 591.

to challenge a state's method of financing public education.<sup>235</sup> In *San Antonio Independent School District v. Rodriguez*, the plaintiffs argued that the Texas public school finance system violated the Equal Protection Clause because the school finance system discriminated against the poor and violated their fundamental right to an education.<sup>236</sup> However, the United States Supreme Court disagreed with the plaintiff's position and held that education is not a fundamental right and upheld the constitutionality of the Texas school finance system.<sup>237</sup> Therefore, school finance reformers can only turn to challenges based on the state constitution to fight finance disparities,<sup>238</sup> as evidenced by *Edgewood v. Kirby*.

### 3. Has School Consolidation Been Fully Explored?

One option that has not been fully explored is to consolidate the various school districts under one Texas educational system.<sup>239</sup> Although former Texas House Speaker Gib Lewis proposed a school consolidation plan, it received little support among legislators.<sup>240</sup> Ironically, Texas public schools were, at one time, under one centralized funding scheme.<sup>241</sup> By the end of the Civil War, the Reconstruction Republicans in the Texas Legislature created a new approach to public education.<sup>242</sup> Consequently, in 1870, the Republican controlled state legislature passed legislation mandating an independent state school superintendent and centralized funding.<sup>243</sup> The primary objective of the state was to provide an education to Anglo-American, Mexican-American, and African-American children.<sup>244</sup> As a result, San Antonio public schools fell under the centralized approach.

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235. See Joseph S. Patt, *School Finance Battles: Survey Says? It's All Just a Change in Attitudes*, 34 HARV. C.R.-C.L. L. REV. 547, 548 (1999) (asserting that school finance reformers can not challenge their state's method of finance under the Equal Protection Clause of the Fourteenth Amendment).

236. See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 58-59 (1973); see also Bernard Lau, *Edgewood Independent School District v. Kirby: A Political Question?*, 43 BAYLOR L. REV. 187 (1991) (describing plaintiff's argument).

237. See *Rodriguez*, 411 U.S. at 35; see also Lau, *supra* note 236 (mentioning the U.S. Supreme Court's holding that education is not a fundamental right).

238. See *Edgewood Indep. Sch. Dist. v. Kirby*, 777 S.W.2d 391, 393 (Tex. 1989); see also Patt, *supra* note 235, at 548.

239. See generally Farr & Trachtenberg, *supra* note 160, at 677 (describing the Texas Legislature's brief contemplation and rejection of a consolidation plan).

240. See Cuellar, *supra* note 207, at 93-94 (describing the proposed consolidation plan for the state's 1,055 school districts into 188 mega-districts divided along county lines).

241. See generally Gambitta et al., *supra* note 2, at 137.

242. See *id.*

243. See *id.*

244. See *id.*



However, many Texans felt threatened by this centralized, republican approach.<sup>245</sup> In some instances, violent protests occurred, resulting in the burning of schoolhouses and physical abuse of teachers who taught minority children.<sup>246</sup> In the early 1870s, Southern Democrats regained control of the state legislature and returned the control and finance of education to the localities.<sup>247</sup> In 1883, an amendment to the Texas Constitution allowed the formation of independent school districts.<sup>248</sup>

#### 4. How Would Consolidation Address the Effects of Racially Restrictive Covenants?

Today, school consolidation is not an attractive option for state legislators.<sup>249</sup> The political ramifications of consolidating the school districts would harm many Texas legislators during their bids for re-election.<sup>250</sup> In order to undo the harm and inequalities that racially restrictive covenants created, Mexican-American families living in San Antonio's west-side neighborhoods should be afforded the same opportunities as citizens on San Antonio's north side. There is tremendous evidence that racially restrictive covenants forced Mexican Americans to live on San Antonio's west side.<sup>251</sup> These Mexican-American families were unable to obtain the economic ability to move out of the once segregated west-side neighborhoods. San Antonio's west side has always consisted of poor neighborhoods with low property value. During the 1999-2000 school year, the property in the Edgewood School District was valued at \$423,883,947, while the property in the Alamo Heights School District was valued at \$1,890,692,234.<sup>252</sup> Under the current Texas educational system, the property tax from San Antonio's west-side neighborhoods used to fund local neighborhood schools is not sufficient to achieve "efficient" education. Inexperienced teachers, large classes, deteriorating school buildings, and a lack of textbooks, library books, and laboratory equipment plague chil-

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245. See *id.* at 138.

246. See *id.*

247. See *id.*

248. See TEX. CONST. art. VII, § 3 (amended 1926). See also Steve Bickerstaff, *Voting Rights Challenges to School Boards in Texas: What Next?*, 49 BAYLOR L. REV. 1017, 1019 (1997).

249. See generally Farr & Trachtenberg, *supra* note 160.

250. See generally Cuellar, *supra* note 207, at 90; Farr & Trachtenberg, *supra* note 160, at 615 (discussing the disparity in the taxing scheme of different school districts).

251. See generally Gambitta et al., *supra* note 2, at 142.

252. Texas Education Agency, *Data Central; District Graduated by Gender, Ethnicity & Program for School Year 1998-1999 Alamo Heights ISD (015901)*, Jan. 3, 2001, available at <http://www.tea.state.tx.us/cgi/>.

dren who attend these deficient schools.<sup>253</sup> Consequently, Mexican-American families living in San Antonio's west side cannot afford to provide an adequate academic and social education. The enforcement of racially restrictive covenants was a major factor that contributed to this lingering problem for the Mexican-American community.

5. The Feasibility of Consolidating Texas Public Schools and the Potential for Undoing the Harm of Racially Restrictive Covenants

The Texas Legislature has the power to remedy the negative effects that racially restrictive covenants have had on Mexican Americans and other minority groups in Texas. By consolidating the public school system so that public schools throughout San Antonio provide equally well-funded education, the Texas Legislature will help Mexican Americans who have been deprived of equal education. The state legislature has the plenary power to consolidate school districts.<sup>254</sup> Consolidation will provide equal funding to every public school.

Specifically, by consolidating the various school districts into one state-funded program, a centralized funding scheme could be developed. However, local school districts would still maintain the decision-making autonomy they retain today. Under a centralized funding scheme, the school districts would not rely on local property tax as their primary means of education funding.<sup>255</sup> Funding may come from a state sales tax so that school districts, regardless of their taxable wealth, could enjoy the same revenue.<sup>256</sup> The Texas Legislature has tried to reform the school finance system by working with judicial mandates to draft a bill that is constitutional.<sup>257</sup> As noted earlier, however, the Legislature has been unsuccessful.<sup>258</sup> On the other hand, consolidation may not create a judicial challenge like other reforms. Instead, consolidating school districts under a centralized funding scheme would treat every student equally. How-

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253. See Charles S. Benson, *Definitions of Equity in School Finance in Texas, New Jersey, and Kentucky*, 28 HARV. J. ON LEGIS. 401, 402 (1991); Benson & O'Halloran, *The Economic History of School Finance in the United States*, 12 J. EDUC. FIN. 495, 511-512 (1987); see also A. WISE, RICH SCHOOLS, POOR SCHOOLS 134-42 (1972).

254. See *Lund v. Schrader*, 492 P.2d 202 (Wyo. 1971); *Sch. Dist. No. 9 of Tillamook County v. Maxell*, 219 P.2d 155 (Or. 1950); see also 68 AM. JUR. 2D SCHOOLS § 41 (2000).

255. See Lau, *supra* note 236, at 204.

256. See Gail Levine, *Meeting the Third Wave: Legislative Approaches to Recent Judicial School Finance Rulings*, 28 HARV. J. ON LEGIS. 507, 521 (1991) (describing how total revenue equality would provide for equal funding).

257. See Ball, *supra* note 206, at 768-80 (citing to the different legislative bills that have been ruled constitutional).

258. See Cuellar, *supra* note 207.

ever, the judicial reaction to centralized funding attempts has yet to be seen.

a. Where Would Funding Come From?

The money needed to provide a centralized funding scheme would come from the state; however, municipal and county governments must also play a greater role in educating its citizens. Using the taxing mechanisms and infrastructure already in place, the state should require municipal and county governments to contribute funds to a centralized funding scheme. This revenue would then be re-distributed equally to schools throughout the state, thereby allowing every child to receive an equally funded education.

There are two obstacles that need to be overcome. First, state legislators need to devise a formula so that every municipal and county government contributes their fair percentage of revenue. Second, municipal and county elected officials may be uncooperative in contributing to the centralized funding scheme.

b. Allowing Local Citizens to Control Where Money Is Spent in Each School

Currently, elected school board members have the power to vote on various issues within their respective school districts. Under a centralized funding scheme, local citizens are elected and will have the same ability to decide how the funding will be dispersed throughout schools. Thus, local citizens will still be able to make important decisions on policy matters for their respective schools. Schools will receive equal funding while local citizens direct how schools should spend those funds. A more detailed analysis of how consolidating school districts would provide centralized funding must be conducted. Such an analysis, however, is beyond the scope of this proposal.

## VI. CONCLUSION

Racially restrictive covenants forced Mexican Americans to live in San Antonio's west-side neighborhoods. Mexican-American families were then forced to send their children to neighborhood schools that were poorly equipped to provide the same type of education that Anglo-American children receive on San Antonio's north-side. Under the Texas school finance system, poor west-side schools were unable to raise sufficient revenue to provide the same type of education that wealthy north-side schools could provide to their students. Therefore, racially restrictive covenants had a negative effect on the educational opportunities of Mexican Americans. The Texas Legislature failed in its attempts to eliminate the disparity in school funding and educational quality between rich

and poor school districts. The Texas Legislature has not seriously considered consolidating the various school districts into one state-run system, however. Under a school consolidation model, every Texas school would receive the same amount of funding and hopefully the same level of education. The Texas Legislature has the power to provide equal education to all Texas students and thereby undo the lingering harm caused by racially restrictive covenants.